THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12775 OF 2005

2nd January, 2006

Between:

Gude Hari Babu …Petitioner

A N D

1. The Govt. of Andhra Pradesh,

Panchayat Raj Dept, rep. by its Secretary,

Secretariat, Hyderabad and Others …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12775 OF 2005

O R D E R :

1. This writ petition has been filed by Gude Hari Babu with a prayer to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring

the orders of the District Panchayat Officer-4th respondent passed in Roc.No 3660/4.2005.G2, dated 20-4-2005 as illegal and arbitrary.

2. The petitioner obtained lease of sand quarry, reach No. 13 for one year from 29-1-2004 to 28-1-2005 on payment of Rs.1,53,90,000/-. For some reasons or the other he could not quarry out the operations for some period. Therefore, he submitted a representation dated 10-9-2004 for extension of the lease period. His representation came to be considered by the District Level Committee met on 15-9-2004. The extension of the lease came to be granted for 95 days from 29-1-2005. The order passed by the District Panchayath Officer, Guntur vide Roc No. 3660/2003.G2/R-13 reads as follows:

> "*The representation dated 10-09-2004 of Sri G.Hari Babu lease holder of reach No.13 was considered by the District Level Committee at its meeting held on 15-09-2004 and granted extension of the existing lease period in reach No.13 for 95 days from 29-01-2005, as detailed below:*
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> 1. *Due to construction of Barricades from 17-02-2004 to 20-04-2004 in Amaaravathi village in connection with ivarathri festival, preventing lorries and Tractors to go to the ramps of reach No.13. . 04 days*
> 2. *Due to disturbances in Amaravathi village in April and May, 2004, resulting in prohibiting lorries and Tractors to enter into and pass through Amaravathi village to the ramps of reach No.13. 09 days*
> 3. *Due to closure of reach No.13 from 19-06-2004 in connection with Krishna Pushkarams. 82 days*
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> *Total: 95 days*

3. Subsequently, extension of lease came to be cancelled excepting 12 days period to compensate Krishna Puskarams Stoppage of quarrying under proceeding dated 2-2-2005 of the District Panchayath Officer, Guntur and Member Convenor, District Level Committee of Sand, Guntur. The petitioner questioned this proceeding by filling W.P.NO. 1957 of 2005. The writ petition came to be disposed of on 8-2-2005 directing the respondents to issue show cause notice before cancellation of the extension of the lease granted in favour of the petitioner. Accordingly a show cause notice came to be issued on 12-2-2005. The petitioner submitted explanation on 16-02-2005 . The District Panchayath Officer taking into consideration the report of the

Superintendent of Police and Regional Vigilance and Enforcement Officer, Guntur made certain recommendations to the District Level Committee for sand, Guntur. Relevant portion of the letter bearing Roc.No. 3660/2003 G2 (R-13), dated 27-3-2005 reads as follows:

> "*In view of this it is clear that the Ex.Senior Assistant has fabricated the records intentionally and there is no lapse on the part of lease holder. Moreover, the chairman and the other members are aware that the then assistant has specifically stated that no bills were issued during the period for which extension was sought. The then Senior Assistant requested the District Panchayat Officer to give him time for updating the records. Accordingly, he was allowed. But, he did not update the records, besides he has fabricated them. A separate charge memo was issued to the assistant for the lapses. As regards to the approval of the District Level Committee to quarrying it is to submit that the District Level Committee have ratified the action of the District Panchayat Officer vide their Resolution NO. 1 dt. 11-06-2004 which missed sight of the both the District Panchayat Officer and Vigilance Department. The lapses pointed out by the Vigilance Department may also be examined by the District Level Committee and express their opinion"*

4. Subsequently, District Level Committee considered the matter and issued the following proceeding Roc No.3660/4-2005-G2, dated 20-4-2005.

> "*The District Level Committee has examined instructions given by the Hon'ble High Court and the contempt notice issued in the reference 2nd cited. The District Level Committee have after examination resolved to accord permission for 30 days in lieu of the period prevented for sand quarrying operations, on the condition that the lease holder accepts and gives his written consent for the above permission.*
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> *Therefore, Sri G.Haribabu, who was holding lease hold rights previously, I requested to give his written consent to the effect that he is accepting for 30 days of compensation so that to place the matter before next District Level Committee"..*

The above proceeding is under challenge in this writ petition.

5. 4th respondent filed counter. It is stated in the counter affidavit that a show cause notice came to be issued to the petitioner vide Roc No. 3660/2003-G2 (R-13) dated

27-03-2005 in pursuance of the direction given in W.P.No. 1957 of 2005 dated 2-2-2005. It is further stated in the counter affidavit that the petitioner submits explanation and in the meanwhile the Vigilance and Enforcement Department has furnished final report through letter No. 293/04-V&E/ENGG/GNT, dated 24-2-2005. Then the District Level Committee has granted extension of lease for a period of 10 days i.e. upto 19-2-2005 vide proc. Roc.NO. 3660/2003-G2, Dt. 10-2-2005. Thus, he was totally granted 22 days i.e. 12 days in lieu of Krishna Pushkaram and 10 days as per the orders of this Hon'ble High Court. The final report of the Vigilance and Enforcement department has been placed before the District Level Committee and on considering the report, the District Level Committee has resolved to grant permission for 30 days to the petitioner. Accordingly, a notice was issued on 20-4-2005 to the petitioner calling for his consent to accept 30 days of compensation. The petitioner did not choose to give his consent and he filed the present writ petition. Para 8 of the counter affidavit needs to be noted and it is thus:

> "*In reply to Para No.12 and 13 of the affidavit it is respectfully submitted that the contention of the petitioner that the District Level Committee by its order dated 2-2-2005 erroneously cancelled the orders issued in Progs. No. 3660/03-G2, dated 22-9-2004 is totally incorrect. As submitted supra the District Level Committee has taken a decision after going through the reports submitted by the Vigilance and Enforcement Department wherein it is categorically stated that the contractor/petitioner ha operated the sand quarrying during the period which he stated in the representation that he has not lifted the sand. Thus, the District Level Committee rightly granted extension of lease for a period of 30 days. It is submitted that in the mean vwhile the Ground Water Department has submitted its report vide Lr. No. 772/Hg/2004/96 dated 22-2-2005 on Amaravathi and Dharanikota sand reach i.e. Reach No. 13 and recommended to impose ban on sand quarrying in the said reach. The report further said if sand quarrying I continued further it effects ground water regime. It is further submitted that a W.P.No. 4830 of 2005 was filed by way of Public Interest Litigation in this Hon'ble High Court questioning the action of the District Level Committee for not denotifying the Amaravathi & Dharanikota Reach in view of the ground water department report in Lr.No.772/Hg/2004/96, Dt. 22-2-2005. The Hon'ble High Court has disposed of the W.P. on15-6-2005 by giving the following order:*

'The petitioner ha aggrieved by the notice dated 6-2-2005 issued for auction of sand. IN the counter-affidavit, it is stated that nobody came forward as a result of the notice for public auction. In the mean time the District Level Committee has taken a decision that a resurvey be conducted in the concerned reach being reach No. 13 and till the report of resurvey is furnished and considered, there will not be any auction.

In this view of the matter, no orders are necessary to be passed in the Writ Petition which is accordingly disposed of. No orders as to costs.

In view of the report of the Ground water department dt. 22-2-2005 the Dist. Level Committee cannot grant any extension of lease to the petitioner which is against the Rule 9 (v) of the G.O.Ms. No. 1 , dt. 1-1-2001"

7. Heard learned counsel for the petitioner and learned Government Pleader for Panchayath Raj and Rural Development appearing for Respondents No. 1 to 4.

8. Learned counsel for the petitioner submits that the petitioner sought for 154 days extension of lease by a representation dated 10-09-2004 and the District Panchayath Officer, Guntur issued proceedings communicating decision of District Level Committee with regard to extension of lease for a period of 95 days. He further submits that when the respondent authority restricted the period only upto 19-2-2005 under the proceedings No.3660/2003-G2, 10-2-2005, the petitioner filed writ petition being W.P.No.1957 of 2005 and the said writ petition came to be disposed of on 8-2-2005. Thereafter, the petitioner submitted explanation to the show cause notice. He further submits that the notice impugned came to be issued to the petitioner without assigning any reasons for reducing the period from 95 days to 30 days. He further submits that the Vigilance and Enforcement Officer has absolved the charges levelled against the petitioner and therefore, reducing the period of lease sought for from 95 days to 30 days is wholly unjust and thus the notice impugned in the writ petition is required to be set aside.

9. Learned Government Pleader appearing for respondents No. 1 to 4 submits that the petitioner is not entitled for extension of lease and therefore no relief can be

granted to the petitioner. He further submits that the notice impugned in the writ petition came to be issued after considering the report of the Superintendent of Police Vigilance and Enforcement Authority. In support of his submissions, reliance has been placed on the decision of this Court in W.P.No. 20854 of 2005 dated 27-9-2005 (Sri Kanaka Durga Agnikula Kshatriya Sand Quarry, Boastsmen and Fishermen Co-op. Society Ltd., Regd. No. 38, Sompally Vs. The District Panchayath Officer and another). In the cited case, it has been held that the Rules do not permit for grant of extension of lease. The relevant portion of the order passed in the above referred writ petition reads as follows:

> "*The representations of petitioner in W.P.No. 20918 of 2005 were rejected by endorsement dated 11-04-2005. Immediately, the same was so challenged. Petitioner continued to operate and bearing reaches leased to him. When fresh auction is slated to 28-09-2005, petitioner approached this Court. This writ petition is therefore not bona fide.*
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> *A reading of the Rules, as noticed hereinabove, would show that the proviso to Rule 9-L of the Rules confers a limited right on the existing lessees to continue the lease for a period of sixty days on payment of ten per cent enhanced lease amount. That situation would arise only when the sand reach is not put to auction for the subsequent year. Except to the limited extent, a lessee who is granted the right to quarry sand for a pecified period cannot claim any right for extension of lease. The Rule 9-B(1) of the Rules is only enabling provision under which the competent authority can grant lease for a period of two years. In these cases, the leases were granted to the petitioners only upto 30-09-2005 and therefore they have no right to compel the respondents to extend the lease whatever the reason be. The petitioners knowing fully well the business proposition and presumably having inspected the reaches and ramp points, became highest bidders and they cannot now turn around after working the leases for considerable period and seek the relief which is not contemplated either under the Rules or the terms of the Contract The respondents have acted well within the jurisdiction and have not violated the Rules.*
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> *These writ petitions are devoid of any merit and are accordingly dismissed".*

10. The petitioner submitted representation on 10-09-2004 to the respondent authority for extension of lease by 154 days giving various reasons which disabled him to carry out sand quarry operations. The respondent authority considered his representation and acceded to accord extension of lease by 95 days. Subsequently, the period of extension of lease came to be reduced to 30 days. It has come on record that the petitioner operated quarry for 22 days and therefore, the balance left over, even if the extension is permissible, would be 73 days. The learned Government Pleader for Panchayath Raj and Rural Development submits that the rules do not permit the extension of the lease and therefore the claim of the petitioner would be remission/compensation. He would contend that in the circumstances of the case, the notice impugned in this writ petition does not warrant interferences.

11. The respondent authority having accepted the contention of the petitioner that he disabled to carry sand quarry operations for 95 days reduced the period to 30. The notice impugned in this writ petition does not indicate of any reasons for reduction of the period from 95 to 30 days and as to how the District Level Committee arrived the period as 30 days.

12. In that view of the matter, I deem it appropriate to direct the respondents to calculate number of days for which the petitioner disabled to quarry the sand quarry operations and then proceed to pass appropriate orders within thirty days from the date of receipt of a copy of this order with regard to granting remission or compensation.

13. Accordingly, the writ petition is disposed of. No order as to costs.

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Justice B.Seshasayana Reddy

2nd January, 2006.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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